

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DARRYL DUNSMORE,

Petitioner,

v.

PARAMO, Warden,

Respondent.

CASE NO. 13-CV-1193-GPC-(PCL)

**ORDER DENYING PETITIONER'S
RULE 60(b) MOTION**

[Doc. No. 21]

Now before the Court is Petitioner's Rule 60(b) Motion. [Doc. No. 21.] For the following reasons, Petitioner's motion shall be **DENIED**.

Background

In his motion, Petitioner "attacks a defect in the integrity of the federal habeas proceedings and procedural ruling of this Court on August 27, 2013." (Id. at 3-4.) Petitioner contends that the United States District Court for the Southern District of California is corrupt, bias, and prejudicial towards Petitioner, and as a result, made

1 procedural rulings contrary to law. (Id.) Specifically, Petitioner argues that the Court
2 incorrectly rejected documents he attempted to file with the Court.¹

3 In support of his motion, Petitioner cites, Butz v. Mendoza-Powers, 474 F.3d 1193,
4 1194 (9th Cir. 2007), arguing that a Rule 60(b) motion is appropriate when attacking a
5 defect in the integrity of the Court or procedural ruling. Although Rule 60(b) is discussed
6 in Butz, Petitioner incorrectly cites its holding.²

7 Legal Standard

8 Generally, motions for reconsideration are decided within the discretion of the
9 district court. However, according to Federal Rule of Civil Procedure 60(b), a party may
10 be relieved from a “*final judgment, order, or proceeding* for the following reasons: (1)
11 mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that,
12 with reasonable diligence, could not have been discovered in time to move for a new trial
13 under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic),
14 misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the
15 judgment has been satisfied, released, or discharged; it is based on an earlier judgment
16 that has been reversed or vacated; or applying it prospectively is no longer equitable; or
17 (6) any other reason that justifies relief.”

18 Discussion

19 Since Petitioner does not specify which reason under Rule 60(b) he is relying on to
20 challenge the Court’s order rejecting his documents filed on August 28, 2013, the Court
21 will consider his motion as a Rule 60(b)(6). According to Rule 60(b)(6) parties may be
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23 ¹Petitioner is referring to the notice of document discrepancies rejecting document: Objection
24 and Motion for Rehearing En Banc in Support of Motion for Counsel... from Darryl Dunsmore.
25 Non-compliance with local rule(s), Civ. L. Rule 5.1: Missing time and date on motion and/or supporting
26 documentation, Civ. L. Rule 7.1: Lacking memorandum of points and authorities in support as a
27 separate document, OTHER: multi-part document. IT IS HEREBY ORDERED: The document is NOT
to be filed, but instead REJECTED and it is ORDERED that the Clerk serve a copy of this order on all
parties. Counsel is advised that any further failure to comply with the Local Rules may lead to penalties
pursuant to Local Rule 83.1.(All non-registered users served via U.S. Mail Service)(skh) (Entered:
08/28/2013)

28 ²In Butz, the district court dismissed Butz's petition for failure to pay that court's \$5.00 filing fee.
Several years later, the Petitioner filed a Rule 60(b) motion challenging the order to dismiss. This case
does not discuss a “court’s integrity” or “procedural rulings” as it relates to a Rule 60(b) motion.

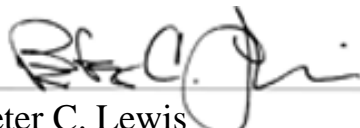
1 relieved from *final judgments, orders, or proceedings* for “any other reason that justifies
2 relief.”

3 Here, Petitioner is challenging the rejection of documents that the Court found,
4 according to local rules, to be filed incorrectly. The Court reasoned that the documents
5 Petitioner attempted to file did not comply with Local Rules, Civ. L. Rule 5.1, Civ. L.
6 Rule 7.1, and were a multi-part motion filed as a single document.[Doc. No. 15.]³ As a
7 result, the Court was within its discretion to accept or reject the document pursuant to the
8 local rules. The Court will also note that in an effort to expedite Petitioner’s case it has
9 accepted several documents in the past from Petitioner that contained filing
10 discrepancies. [Doc. No. 5, 10.]

11 Accordingly, Petitioner’s Rule 60(b) motion is **DENIED**.

12 **IT IS SO ORDERED.**

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15 DATE: October 3, 2013


Peter C. Lewis
United States Magistrate Judge

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19 cc: The Honorable Gonzalo P. Curiel
20 All Counsel of Record
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28 ³Petitioner attempted to file a single document that contained several requests labeled “Objection and Motion for Rehearing/Reconsideration En Banc in Support of Motion for Counsel, Lodgment of Discovery and Subpoenas Waiver of Rules” that was undated and lacked a memorandum of points and authorities in support of each contention as a separate document(s). [Doc. No.15 at 1.]